IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 583 of 1999.

Reserved on: 7.8.2007.

Date of decision: 27.8.2007.

Mrs. Laxmi Sharma … Petitioner

Versus

State of H.P. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Pt. Om Parkash with Mr. Rajender Sharma, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Deputy Advocate General, for respondent No. 1.

Mr. Shrawan Dogra, Advocate, for respondent No. 3.

Per V.K. Ahuja, J.:

This is a civil writ petition filed under Articles 226/227 of the Constitution of India challenging the judgment dated 25.2.1999 passed by the H.P. State Administrative Tribunal.

Briefly stated the facts of the case are that the petitioner while working in the Education Department from the year 1975 was taken on deputation as Technical Assistant in the Department of Language & Culture where she joined as Technical Assistant on 11.3.1981 and has been permanently absorbed in the Department. In

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

addition to Technical Assistants, there were three posts of Sr. Technical Assistants which posts were being held amongst others, by respondent No. 3. Respondent No. 3 was holding the post of Sr. Technical Assistant which post was re-designated as Technical Assistant with effect from 1.1.1986 and resultantly, the post of Sr. Technical Assistant in the Department of Language and Culture ceased to exist on and after 1.1.1986. It was further alleged that there are only four posts of Technical Assistants in the pay scale of Rs.1800-3200. There are three wings/sections in the Language and Culture Department known as Archives, Archeology and Museum, wherein the Technical Assistants as well as Jr. Technical Assistants of the Department discharge the duties in all the three wings. It was further alleged that the posts of Technical Assistants is a single cadre and there is no distinction between the Museum, Archeology and Archives. It was further alleged that there are four Technical Assistants in the Department including the petitioner and respondent No. 3 who are discharging the duties relating to antiquities in the State. The duty list and the job chart of all the Technical Assistants whether they are performing their duties in Museum, Archeology and Archives, wings are the same, common and similar.

It was further alleged that in the year 1991, a seniority list of Technical Assistants was circulated on 13.6.1991 and name of the petitioner was duly included in this list. However, in the seniority list circulated on 9.12.1993, the name of petitioner was not shown in the seniority list without affording any opportunity to the petitioner. The petitioner made various representations and ultimately filed Original Application before the State Administrative Tribunal numbered as O.A. No. 1175/1995, which is still pending. It was alleged that during the pendency of the said Original Application of the petitioner, the State

Government circulated final seniority list of Technical Assistants of the Department on 13.9.1996 wherein the name of the petitioner was duly included. Respondent No. 3 challenged the seniority list by filing Original Application No. 1973/1996 before the State Administrative Tribunal, which allowed the same on 25.2.199 directing respondents to exclude the name of the petitioner from the seniority list dated 13.9.1996 and the promotion, if any, be made in accordance with the seniority list by excluding the name of the petitioner. The petitioner has filed the present writ petition challenging the said order passed by the State Administrative Tribunal on 25.2.1999 on various grounds.

We have heard the learned counsel for the parties and have also gone through the record of the case.

The submissions made by the learned counsel for the petitioner were that all the three wings of Archives, Archeology and Museum are same and are part of the Department and these posts are inter-changeable and respondent No. 3 had been performing the duties in different wings of the Department and there are no separate rules or eligibility criteria for posting in any wings of the Department and therefore, the order of the State Administrative Tribunal is liable to be set aside. It was submitted that all the Technical Assistants are working on antiquities and job chart will show that they can be posted in any wing of the Department and since these wings form one single cadre, the petitioner was entitled to her seniority as per the original list circulated in the year 1991.

A perusal of the reply filed by respondent No. 2 i.e. the Joint Director(Archives) Department of Language and Culture in the Original Application filed by respondent No. 3 before the State

Administrative Tribunal will show that they had specifically pleaded as under:

> "The applicant is himself a beneficiary of the cadre of Technical Assistant being common and as has been submitted in para-6(1) supra, he had joined as Junior Technical Assistant (Museum) and was later confirmed in Archives and is now in Archeology. The applicant, therefore, cannot now take this plea that the Museum and Archeology is one cadre and Archives is another. This contention of the applicant is totally wrong and not based upon any facts, rules, regulations or instructions of the Govt. and therefore can no be allowed to stand."

In further reply it was pleaded by respondent No. 2 that the category of Technical Assistants in the respondent department irrespective of where they are performing their duties, is one single and common cadre and the applicant cannot attempt to re-arrange the same to suit his convenience.

It is clear that earlier there was a post of Sr. Technical Assistant as well as Junior Technical Assistant, but the post of Sr. Technical Assistant in the Department of Language and Culture ceased to exist on and after 1.1.1986 and the post of Sr. Technical Assistant was also re-designated as Technical Assistant with effect from that date. Coming to the essential qualifications required for holding the post of Jr. Technical Assistant, a perusal of notification dated 25.11.1985 shows that the essential qualification was M.A. in Archeology/History with ancient Indian History as one of the papers. Desirable qualification was Diploma in Museology or 3 years experience in any National/State/reputed Museum.

The essential qualification required for the post of Technical Assistant as per notification dated 13.3.1981 was M.A. in

ancient Indian History, Diploma/certificate in Archives Course or 5 years practical experience of work in Archives. Coming to the Recruitment and Promotion Rules to the Technical Assistant, the minimum qualification required was Master Degree in Ancient History and Diploma/certificate in Archives keeping or 5 years experience in record keeping.

Coming to the posting of respondent No. 3 as Sr. Technical Assistant, respondent No. 3 who was posted as Jr. Technical Assistant in the State Museum, Shimla, was promoted as Sr. Technical Assistant against a vacant post in Archeology vide office order dated 8.2.1991. A perusal of the office order dated 25.4.1991 shows that respondent No. 3 was posted as Junior Technical Assistant on 31.3.1983 and he was posted in the State Museum, Shimla against a vacant post. He was confirmed as Junior Technical Assistant, Archives vide notification dated 25.4.1991 (Annexure R-1). He was presently working as Technical Assistant, Archeology. This clearly shows that he was working in the State Museum against a vacant post, was confirmed in the Archives and was now presently working in the Archeology meaning thereby that these three wings of the Art & Culture Department are inter-changeable posts and as such, respondent No.3 had been on the different wings of the departmental post on different times. Therefore, there is no substance in the plea raised by the respondents and as confirmed by respondent No. 2 in its reply that these are inter-changeable posts and there are no separate post of different wings.

We may mention here that respondent No. 2 who has filed the reply before the State Administrative Tribunal happens to be the husband of the petitioner. This plea was raised before the State Administrative Tribunal but they had not given any such opinion that the reply filed by respondent No. 2 was wrong or for the benefit of

respondent No. 3 in that case i.e. the present petitioner. It was for the State Government to have considered that question as to whether the reply should have been filed by respondent No. 2 or not or it should have been filed by some other officer on behalf of the Department. However, no benefit was given by the State Administrative Tribunal in view of the reply of respondent No. 2 since they had decided the case filed by respondent No. 3 as against the petitioner, wife of respondent No. 2. We may mention here that a copy of the opinion given by the Commissioner-cum-Secretary (Language) is also attached with the case file in which the Personnel Department had opined that the posts of Technical Assistants(Museum/Archeology/Archives) belong to one and the same Department i.e. Director, Language & Culture who shall initiate action to decide about their common cadre and common seniority by preparing single common rules for the aforesaid three posts. The said copy is at Page-101 of the case file, though it is an unattested copy. This fact has been mentioned to show that this plea of common cadre of the wings of Language & Culture Department was firstly mooted by the Commissioner-cum-Secretary (Language) of the Government of Himachal Pradesh and, therefore, it can be inferred that the reply filed by respondent No. 2 can be considered as being filed on behalf of the Department.

A perusal of the impugned order passed by the learned State Administrative Tribunal shows that it was observed that there was substance in the plea raised by the learned counsel for the applicant that respondent No. 3 does not belong to the cadre of Technical Assistants in the Department of Archeology. It was nowhere observed that the petitioner was not having essential qualifications as required for the post of Technical Assistant. It was finally concluded that the post

held by respondent No. 3 i.e. the present petitioner is that of Technical Assistant(Archives), but it was nowhere observed that this post was not inter-changeable and we have already mentioned above the posting and confirmation of respondent No. 3 which shows that he was appointed in the Department of Language & Culture, while he was promoted against the post of Technical Assistant in Archeology where he was working, though confirmed as Junior Technical Assistant in Archives. Thus, once respondent No. 3 himself was holding the post in different wings, it cannot be said that the petitioner who was working in the Archives Department was not competent to be posted against the Technical Assistant in the two other wings. There is nothing on record to show that the petitioner was not qualified to hold the post in the wings of the Department of the State Museum. Therefore, the findings recorded by the learned Tribunal cannot be said to be correct that the petitioner was not part of the same cadre i.e. of Technical Assistant, Archives, Museum and Archeology. The impugned order passed by the State Administrative Tribunal is set aside and the petitioner shall be entitled to be included in the original seniority list of year 1991 circulated on 13.6.1991 where her name was included earlier in the list. The seniority list shall be redrawn accordingly and the petitioner shall be entitled to all the consequential benefits thereof. The writ petition is accordingly allowed. There is no order as to costs.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

August 27, 2007
(BSS)